

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ILLIA KORNEA, et al

Plaintiffs,

-against-

JEFFREY A. MILLER,

Defendant.

22-CV-4454 (PAE) (KHP)

ORDER

TO: HONORABLE PAUL E. ENGELMAYER, United States District Judge
FROM: KATHARINE H. PARKER, United States Magistrate Judge


On December 27, 2023, Plaintiffs filed a motion to dismiss Defendant's counterclaim for breach of the covenant of good faith and fair dealing pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(3) for improper venue, and a motion for a more definite statement pursuant to FRCP Rule 12(e) as to Defendant's counterclaim for tortious interference. The Court has already held that this is the correct venue for the instant claims pursuant to the choice of venue clause in the Joint Venture Agreement. Additionally, any motion brought pursuant to FRCP 12(e) is untimely, because Plaintiffs already filed an answer to Defendant's counterclaims. *See Powers-Barnhard v. Butler*, 2021 WL 105752, at *2 (N.D.N.Y. Jan. 12, 2021) ("Under Rule 12(e), a motion for a more definite statement must 'be made before filing a responsive pleading.'") However, in light of Plaintiffs' pro se status, and out of excessive solicitude for Plaintiffs, the Court construes Plaintiffs' motion as one asserted pursuant to FRCP 56 as a motion for summary judgment.

Although the deadline for Plaintiffs to file a motion for summary judgment has long passed, the Court nevertheless accepts this motion, again out of excessive solicitude to Plaintiffs

and in the interest of judicial economy. The deadline for Defendant to oppose the motion is **Friday, February 9, 2024**. Plaintiffs' reply is due **Friday, March 1, 2024**.

SO ORDERED.

Dated: December 29, 2023
New York, New York



KATHARINE H. PARKER
United States Magistrate Judge